

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY OSTER,

Plaintiff,

v.

HAROLD CLARKE, *et al*,

Defendants.

Case No. C07-5508RJB-KLS

ORDER REGARDING SERVICE
FORMS PROVIDED BY
PLAINTIFF FOR SERVICE

This matter comes before the Court on plaintiff's filing of copies of the complaint and service forms for service on defendants Victoria Roberts, Kerry Arlow, Bill Franks, Joiann DeHaven, and Alice Payne in response to the Court's order to do so. (Dkt. #29). After reviewing the service forms provided by plaintiff, the Court hereby finds and orders as follows:

In its order dated May 27, 2008, the Court noted that in mid-March 2008, return of service forms had been filed with the Court, indicating that service by mail on defendants Victoria Roberts, Kerry Arlow, Bill Franks, and Joiann DeHaven at the addresses provided by plaintiff could not be executed due to insufficient addresses therefor. (Dkt. #11-#12, #14-#15 and #29). In addition, it did not appear plaintiff had provided the Court with a service form and copy of the complaint for service for defendant Alice Payne, as the record failed to reflect any service had been made upon her.

The Court thus ordered plaintiff to provide five additional copies of the complaint and five service

1 forms containing the full and correct addresses for service on each of the above defendants, so proper service
2 again could be attempted by the United States Marshal with respect thereto. On June 10, 2008, plaintiff filed
3 with the Court a copy of the complaint and a service form for each of those defendants. On the service form
4 for each defendant, plaintiff wrote the address at which notice of service was to be had as being in care of the
5 Attorney General of Washington, and further stated as follows: "THE ABOVE NAMED DEFENDANT IS
6 A D.O.C. EMPLOYEE AND WILL BE REPRESENTED BY THE ATTORNEY GENERAL."

7 The service forms plaintiff submitted for service on defendant Franks and defendant Roberts will not
8 be accepted, as the addresses he provided for service on those two defendants are improper. First, it appears
9 defendant Bill Franks no longer is an employee of the Washington State Department of Corrections
10 ("DOC"). See Answer (Dkt. #28), p. 1. Thus, even if service in care of the Attorney General could be said to
11 constitute proper service on defendants who are current DOC employees, such would not apply to defendant
12 Franks. Second, no appearance by the Attorney General has been made on behalf of defendant Roberts, nor
13 is there any indication she will be so represented or has consented to be served via the Office of the Attorney
14 General. As such, service via the Attorney General on her is improper as well.

15 With respect to defendants Arlow, DeHaven and Payne, however, the Court finds that further service
16 upon them is not required. The Attorney General has appeared on behalf of all of them. See (Dkt. #10 and
17 #21). While the notice of appearance for defendant Arlow specifically states that objection as to sufficiency
18 of service of process is not waived (Dkt. #10), the answer filed by the Attorney General on her behalf does
19 not raise any such affirmative defense (Dkt. #28). See Federal Rule of Civil Procedure 12(b). Nor was any
20 motion to dismiss raising the defense of lack of sufficient service of process filed by defendant Arlow. See
21 id. This is even more true in regard to defendants DeHaven and Payne, as the same answer was filed on their
22 behalf, and the notice of appearance filed by the Attorney General for them contained no language reserving
23 waiver of objection to sufficiency of service of process. See (Dkt. #21 and #28).

24 Accordingly, the Court finds service has been waived with respect to defendants Arlow, DeHaven
25 and Payne. As to defendants Franks and Roberts, however, plaintiff is ordered to complete **two (2)** service
26 forms containing the proper addresses for service thereon – and not in care of the Attorney General – and
27 return them to the Court **by no later than August 7, 2008**, so that proper service by mail may be attempted.
28 The Clerk thus is directed to send **two (2)** additional service forms to plaintiff for him to fill out and return

1 to the Court so that the Court can attempt service by mail as noted above.

2 The Clerk also is directed to send a copy of this Order to plaintiff and to all defendants or to counsel
3 for those defendants who have had counsel appear on their behalf.

4 DATED this 8th day of July, 2008.

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8 Karen L. Strombom
9 United States Magistrate Judge
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